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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.8504 OF 2015

Govindprasad Mangilal Zanwar & Others PETITIONERS

VERSUS

Prakash Nivrutirao Patil Bemberkar & others RESPONDENTS

.....

Mr. P. R. Katneshwarkar, Advocate for the petitioners

Mr. V. D. Gunale, Advocate for respondent No.1

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[CORAM : SUNIL P. DESHMUKH, J.]

DATE : 26th AUGUST, 2015

ORDER :

1. After hearing learned advocates for the parties for quite some time, the position appears to emerge that proceedings bearing change report No. 538 of 2009 is in respect of elections to the managing committee of the trust whereas change report bearing No. 785 of 2009 is in respect of filling up of vacancies occurring in the managing committee of the trust.

2. Said two proceedings were pending before Assistant Charity Commissioner. Present petitioners had opposed the same. Both the change reports were accepted by the Assistant Charity Commissioner. The matter was, as such, taken in revision under section 70A of the Bombay Public Trusts Act, by

present petitioners in respect of change report No. 538 of 2009.

3. The revision had been allowed by the Joint Charity Commissioner under his order dated 23rd January, 2015 by passing following operative order -

- “(1) The Revision Petition is allowed.*
- (2) The order passed by the then learned Assistant Charity Commissioner in Change Report No. 538/2009 dtd. 10/09/2012 is hereby set – aside. The Change Report submitted by Reporting Trustee is held as not legal and valid.*
- (3) The Revision Petitioners to deposit costs of Rs.2,000/- on or before three months period in the Office of learned Assistant Charity Commissioner, Nanded*
- (3-A) The costs is imposed as they had knowledge of order and despite of it, they had belatedly filed Revision Petition.*
- (4) Suo-motu proceeding initiated under Section 70-A of the Trust Act so as satisfy with regard to correctness of findings and the order recorded by the then learned Assistant Charity Commissioner in the aforesaid matter.*
- (5) Judicial Clerk / Superintendent be directed to call for Record and Proceeding of Change Report No. 785/2009 decided on 10/09/2012 by the then learned Assistant Charity Commissioner, Nanded and after receipt of the Record and Proceeding, it be registered as Revision Petition under Section 70-A of the Trust. After receipt of the said Record and Proceedings, notices shall be issued to the concerned parties.*

- (6) *inform learned Assistant Charity Commissioner by forwarding copy of Judgment and Order.*
- (7) *Entry be taken on Schedule-I of the said Trust.*
- (8) *Compliance be reported.*
- (9) *Record and proceeding be sent to the office of learned Assistant Charity Commissioner, Nanded."*

4. This order was carried by respondents No. 1 to 10 to an application pursuant to section 72 of the Bombay Public Trusts Act before District Judge, Nanded. In said application – Miscellaneous Application Requiring Judicial Enquiry No. 9 of 2015, an application for interim relief at Exhibit-5 had been moved by the applicants / present respondents No.1 to 10. Under an order dated 11th June, 2015, execution, operation and effect of order dated 23rd January, 2015 passed in revision by Joint Charity Commissioner had been stayed by District Judge-1 Biloli, till final decision in the application.

5. After hearing learned advocates on either side, the position further emerges that according to learned advocate for the respondents herein all the parties have appeared and MARJE No. 9 of 2015 can be taken up for consideration at an early date.

6. Mr. Katneshwarkar, learned advocate for the petitioners

submits that as a matter of fact and law, rejection of change report would not be amenable to any challenge. Said order cannot form subject matter of challenge, particularly under section 72 of the Bombay Public Trusts Act, having regard to order passed in the revision, since according to him, the ultimate effect is rejection of change report No. 538 of 2009, which being not executable.

7. Mr. Gunale, learned advocate for respondent No.1, however, does not agree to these submissions. He submits that in any case, this would be a submission pertaining to merits of the case and such legal submission can always be advanced before the district judge where the basic challenge is lying. However, this would not be a reason good enough for staying operation of order on Exhibit-5. He, therefore, resiles to a situation wherein an early disposal of MARJE No.9 of 2015 can be made possible under the orders of this court.

8. On the other hand, Mr. Katneshwarkar, learned advocate for the petitioners submits that the learned district judge has been in error in granting stay to the operation of the order in revision, in its totality. According to him, there is no order which is amenable to section 72 of the Bombay Public Trusts Act. He

has merely initiated proceedings pursuant to section 70A and has not passed any final order, which would be subject matter of challenge under section 72 of the Bombay Public Trusts Act. He, therefore submits that the order should be modified removing the stay to operation of clauses "4" and "5" referred to herein above under the operative order passed in the revision.

9. Mr. Gunale, learned advocate for respondent No.1 is at pains to explain as to how this can be a subject matter of MARJE 9 of 2015 pending before the district judge. He submits that this is a consolidated order passed and as such, the order as a whole is under challenge and it cannot be segregated, as desired by the other side. He, therefore, submits that there is no error committed by the district judge in staying the operation of the entire order. Learned advocate for the respondent further submits that such submission could as well be made before the district judge, while the matter is being considered finally. He further requests not to segregate the matter in accordance with the submissions which, in his estimate, may give rise to multiplicity of proceedings.

10. Although Mr. Gunale submits as aforesaid, *prima facie* it appears that the petitioners may be able to content in respect of

section 70A of the Bombay Public Trusts Act and initiation of proceedings under clause "4" and "5" of the operative order and it is a form of challenge, however, looking at that all the parties in the matter pending before the district judge have appeared and looking at the subject matter involved, it would be expedient to direct the district judge to consider expeditious disposal of the *lis* pending under MARJE No. 9 of 2015, preferably within a period of eight weeks from the date of receipt of writ of this order, leaving all the contentions, referred to herein above, open for the parties to be taken.

11. Accordingly the district judge to consider the expeditious disposal of MARJE No. 9 of 2015, preferably within a period of eight weeks from the date of receipt of writ of this order.

12. With aforesaid directions, the writ petition stands disposed of.

[SUNIL P. DESHMUKH, J.]